

SERVICE DATE – JUNE 13, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34797

NEW ENGLAND TRANSRAIL, LLC, d/b/a  
WILMINGTON & WOBURN TERMINAL RAILWAY  
– CONSTRUCTION, ACQUISITION AND OPERATION EXEMPTION –  
IN WILMINGTON AND WOBURN, MA

Decided: June 12, 2006

By petition filed on December 5, 2005, New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway (NET), seeks authority to acquire in part, to construct in part, and to operate as a rail common carrier a total of approximately 7,500 feet of trackage located in Wilmington and Woburn, MA. Upon commencement of rail operations, NET would receive at its proposed facility, and would provide rail transportation for, a variety of commodities, including, among others, sand and gravel, plastic resins and liquids, municipal solid waste (MSW), and construction and demolition debris (C&D).

NET proposes to subject all of the C&D and some of the MSW it receives to sorting, grinding, crushing, aggregating, segregating, and/or baling before being loaded into rail cars or containers for rail shipment. NET's construction plans include facilities to carry out these activities, which, it says, would facilitate the transportation of MSW and C&D. NET states that all of the proposed activities and operations at the site (including the MSW and C&D activities) would either constitute rail transportation or would be integrally related to rail transportation and therefore qualify for preemption from most state and local regulation under 49 U.S.C. 10501(b).<sup>1</sup>

Several parties have replied to the petition. National Solid Wastes Management Association (NSWMA), the New Jersey Department of Environmental Protection together with the New Jersey Meadowlands Commission, and the Massachusetts Department of Environmental Protection, among others, disagree with NET's preemption arguments. These parties maintain that NET's proposed MSW and C&D activities would be solid waste management and

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<sup>1</sup> NET's discussion of this issue in its petition is in keeping with the Board's instructions in New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Company – Construction and Operation Exemption – In Wilmington and Woburn, MA, STB Finance Docket No. 34391 (STB served May 3, 2005).

processing activities and therefore would not constitute rail transportation eligible for preemption under section 10501(b).

In a decision served on March 3, 2006, the Board instituted a proceeding pursuant to 49 U.S.C. 10502(b).<sup>2</sup> The Board's Section of Environmental Analysis (SEA) has begun preliminary environmental review of NET's proposal.

On April 27, 2006, a coalition of parties headed by NSWMA filed a petition for expedited consideration (joint petition) of the threshold issue of the Board's jurisdiction over this project. They urge the Board to postpone further environmental review until the Board determines the extent of its jurisdiction here. On May 17, 2006, NET replied in opposition to the joint petition, arguing that the Board and SEA should proceed with the full case.

On May 11, 2006, the Environmental Protection Agency (EPA) submitted a letter to SEA. EPA notes that the NET project would be located on a portion of a site formerly operated by the Olin Corporation and that the entire Olin site has been formally added to the "National Priorities List" under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund law). EPA states that it is now in the process of preparing for negotiations to determine existing site conditions and whether the site can be remediated and developed safely. Therefore, EPA suggests that SEA defer any further environmental review of the NET project until EPA has finished its remedial investigation and feasibility study ("RI/FS") of the property under the Superfund law.

The comments received to date on the petition raise questions about the extent to which the activities proposed to be conducted by NET come within the Board's jurisdiction. It makes sense to resolve this question prior to proceeding further with the Board's environmental review process. Disposition of this issue will assist SEA in determining the appropriate scope of environmental review in this case.<sup>3</sup>

The Board will therefore first examine, and issue a decision on, the jurisdictional question after providing an opportunity for all interested parties to comment on the extent to which NET's proposed activities are part of rail transportation and thus qualify for preemption under 49 U.S.C. 10501(b). Specifically, parties are asked to comment on what activities would normally be associated with transloading and thus would be part of rail transportation. Parties are also invited to discuss what activities would normally be associated with MSW and C&D processing and would occur even absent rail transportation. Parties who already have commented need not duplicate their efforts by submitting additional comments at this time. Any person may reply to comments received pursuant to this decision. Copies of any further comments and replies should be served on all persons on the service list for this proceeding. The list is available on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov).

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<sup>2</sup> The Board authority that NET seeks is an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901.

<sup>3</sup> The Board will address EPA's request (that SEA defer further review until EPA's RI/FS is complete) once the Board has determined the extent of its jurisdiction over this project.

It is ordered:

1. Comments addressing the jurisdictional question described above should be submitted by July 13, 2006.
2. Replies to comments filed should be submitted by August 2, 2006.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary